

Faulkner
PLM-11

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

9013

FILE: B-193326

DATE: February 1, 1979

MATTER OF: Department of the Interior - [Pay adjustment
limitation]

DIGEST: Pay adjustment limitation of section 614(a) of Public Law 95-429 applies only to those employees whose pay is adjusted by one of methods listed in that section. Since the pay of employees who negotiated their wages under section 9(b) of Public Law 92-392 is not adjusted pursuant to any of the methods listed, the section 614(a) limitation does not apply to them.

This action is in response to a request for an advance decision submitted by Mr. John F. McKune, Director of Personnel, of the Department of the Interior, concerning the 5.5 percent pay adjustment limitation or "pay cap" enacted by section 614(a) of the Treasury, Postal Service, and General Government Appropriation Act, 1979, Public Law 95-429, October 10, 1978, 92 Stat. 1001, 1018. The question presented is whether the pay cap applies to those prevailing rate employees who, through collective bargaining, negotiate their wages with the Department of the Interior. In accordance with our "Procedures for Decisions on Appropriated Fund Expenditures in Federal Labor-Management Relations Program," 4 C.F.R. Part 21, 43 F.R. 32395-96, July 27, 1978, interested parties were served, and we have considered the comments and views of those parties that were provided to us.

Section 614(a) of Public Law 95-429, provides that:

"No part of any of the funds appropriated for the fiscal year ending September 30, 1979, by this Act or any other Act, may be used to pay the salary or pay of any individual in any office or position in an amount which exceeds the rate of salary or basic pay payable for such office or position on September 30, 1978, by more than 5.5 percent, as a result of any adjustments which take effect during such fiscal year under—

DWG 0780

003391
108498

dec

"(1) section 5305 of title 5, United States Code;

"(2) any other provision of law if such adjustment is determined by reference to such section 5305; or

"(3) section 5343 of title 5, United States Code, if such adjustment is granted pursuant to a wage survey (but only with respect to prevailing rate employees described in section 5342(a)(2)(A) of that title)."

It is important to note that although the first part of this provision refers to the part of "any individual in any office or position," the remainder of the section limits the restriction only to salary adjustments made under specific statutory provisions.

The employees involved here are those covered by section 9(b) of Public Law 92-392, August 19, 1972, 86 Stat. 564, 574, 5 U.S.C. § 5343 note, which provides that:

"The amendments made by this Act shall not be construed to—

"(1) abrogate, modify, or otherwise affect in any way the provisions of any contract in effect on the date of enactment of this Act pertaining to the wages, the terms and conditions of employment, and other employment benefits, or any of the foregoing matters, for Government prevailing rate employees and resulting from negotiations between Government agencies and organizations of Government employees;

"(2) nullify, curtail, or otherwise impair in any way the right of any party to such contract to enter into negotiations after the date of enactment of this Act for the renewal, extension, modification, or improvement of the provisions of such contract or for the replacement of such contract with a new contract; or

"(3) nullify, change, or otherwise affect in any way after such date of enactment any agreement, arrangement, or understanding in effect on such date with respect to the various items of subject matter of the negotiations on which any such contract in effect on such date is based or prevent the inclusion of such items of subject matter in connection with the renegotiation of any such contract, or the replacement of such contract with a new contract, after such date."

As generally construed, this section has been held to mean that the employees covered by it negotiate their wages through the collective-bargaining process, rather than having them set through prevailing rate surveys. Matter of Department of the Interior, 57 Comp. Gen. 259 (1978).

The importance and intent of section 9(b) was recently affirmed by section 704 of Public Law 95-454, October 13, 1978, 92 Stat. 1111, 1218, which provides that:

"(a) Those terms and conditions of employment and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies which were the subject of negotiation in accordance with prevailing rates and practices prior to August 19, 1972, shall be negotiated on and after the date of the enactment of this Act in accordance with the provisions of section 9(b) of Public Law 92-392 without regard to any provision of chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph.

"(b) The pay and pay practices relating to employees referred to in paragraph (1) of this subsection [read as subsection (a) of this section] shall be negotiated in accordance with prevailing rates and pay practices without regard to any provisions of—

"(A) chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph;

"(B) subchapter IV of chapter 53 and subchapter V of chapter 55 of title 5, United States Code; or

"(C) any rule, regulation, decision, or order relating to rates of pay or pay practices under subchapter IV of chapter 53 or subchapter V of chapter 55 of title 5, United States Code."

In order to determine whether the pay limitation found in section 614(a) of Public Law 95-429, applies to the employees covered by section 9(b) of Public Law 92-392, it must be determined whether the manner in which their wages are adjusted is included in those specified in section 614(a). Section 614(a)(1) refers to pay adjustments made under 5 U.S.C. § 5305, which establishes the system of yearly comparability adjustments for the General Schedule pay system. Section 614(a)(2) includes pay adjustments made with reference to 5 U.S.C. § 5305. The wages of section 9(b) employees are in no way tied to 5 U.S.C. § 5305, therefore, neither 614(a)(1) nor (2) applies.

Section 614(a)(3) refers to wage adjustments of prevailing rate employees that are made pursuant to wage surveys conducted under 5 U.S.C. § 5343. As stated above, the wages of employees covered by section 9(b) are set or adjusted through the collective-bargaining process, not pursuant to wage surveys. Therefore, the method used to adjust the wages of section 9(b) employees is not included within those listed in section 614(a). See also B-193573, January 8, 1979.

Accordingly, the 5.5 percent pay adjustment limitation or "pay cap" imposed by section 614(a) of Public Law 95-429, does not apply to employees whose wages are negotiated under section 9(b) of Public Law 92-392.

With respect to the jurisdictional aspects of this case, we have held herein that the pay increases in question are not made under the authority of 5 U.S.C. § 5343--a part of subchapter IV of chapter 53 of title 5 as it relates to the language of section 704 of the Civil Service Reform Act of 1978. Also, this case does not involve premium pay as authorized in subchapter V of chapter 55 of that title, but involves a generally applicable appropriation limitation, which within its terms, is applicable to all funds appropriated for fiscal year 1979. Since we have general authority to consider expenditures of appropriated funds except where that authority is specifically denied or limited, we have authority to

B-193326

issue a decision in this matter. It is noted, however, that with respect to pay rates and practices negotiated under labor agreements by the employees and agencies concerned, we have, in B-189782, January 5, 1979, held inapplicable any limitations in the provisions of title 5, United States Code, mentioned in section 704 of the Civil Service Reform Act of 1978 or our decisions issued under those provisions.



Deputy Comptroller General
of the United States